

# RIGHT TO KNOW ADVISORY COMMITTEE

## LEGISLATIVE SUBCOMMITTEE MEETING

### DRAFT AGENDA

August 30, 2010

1:00 p.m.

Room 438, State House

#### Welcome and introductions

- I Issues from July 19, 2010 meeting
  - A. Draft legislation: Ensure that decisions are made in proceedings that are open and accessible to the public
  - B. Draft legislation: Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents
  - C. Draft legislation: Protection of Social Security Numbers
  - D. Draft legislation: Making and maintaining records of public meetings
- II Review of Legislative Subcommittee tasks
  - 1. Examine use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public (see I, A above);
  - 2. Consideration of revision of penalties for violations of the freedom of access laws (no change recommended);
  - 3. Whether partisan party caucuses should be specifically excluded from the definition of "public proceedings" (no change recommended);
  - 4. Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (see I, B above);
  - 5. Policy on whether e-mail addresses are public records (no change recommended);
  - 6. Central Voter Registry (no change recommended);
  - 7. Social Security Numbers (see I, C above);
  - 8. Use of technology in attending meetings (recommending draft to full Advisory Committee, not unanimous);
  - 9. Keeping records of public proceedings (see I, D above); and
  - 10. Scope of review process (1 MRSA §434 criteria) (recommending draft to full Advisory Committee)
- III Other

No Legislative Subcommittee meetings scheduled

Full Advisory Committee meeting scheduled for Thursday, September 23, 2010, 1:00 p.m.

#### Adjourn

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Meetings in public: 4 options

**Sec. 1. 1 MRSA §401** is amended to read:

**§401. Declaration of public policy; rules of construction**

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that communications outside of public proceedings and clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. It is further the intent of the Legislature that members of public bodies not use communication technologies outside of public proceedings to defeat the purposes of this subchapter.

This subchapter does not prohibit communications between members of a public body unless the communications are intended to or are used to defeat the purposes of this subchapter.

Communications between the members of a public body are not prohibited unless the communications are intended to or used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

**Sec. 1. 1 MRSA §402, sub-§3, ¶ R** is enacted to read:

R. Information in a communication between a constituent and an elected official if the information:

(1) Would be confidential if it were in the possession of any other public agency or official; or

(2) Is the constituent's personal medical information, the constituent's personal financial information or personal information about the constituent's loss of housing or employment.

This paragraph does not include requests for elected officials to take public actions or votes.

**Sec. 1. 1 MRSA §402, sub-§5** is enacted to read:

**5. Elected officials' communications.** A record involving communications between a person and an elected official is a public record except for information contained in the record that:

A. Is excepted from the definition of public record in subsection 3;

B. Is designated as confidential by statute; or

C. Would be confidential if it were in the possession of another public agency or official.

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b>Sec. 1. 1 MRSA §402, sub-§3,</b> ¶N is amended to read:</p> <p>N. Social security numbers in the possession of <del>the Department of Inland Fisheries and Wildlife</del> <u>an agency or official</u>. Subchapter 2-A applies to the protection of Social Security numbers in the possession of <u>an agency or official</u>; and</p>	
<p><b>Sec. 2. 1 MRSA §410</b> is amended to read:</p> <p><b>§410. Violations</b></p> <p>For every willful violation of this subchapter <u>or subchapter 2-A</u>, the state government agency or local government entity whose officer or employee committed the violation <del>shall be</del> <u>is</u> liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.</p>	
<p><b>Sec. 3. 1 MRSA c. 13, sub-c. 2-A</b> is enacted to read:</p> <p><b><u>SUBCHAPTER 2-A</u></b> <b><u>PROTECTION OF SOCIAL</u></b> <b><u>SECURITY NUMBERS</u></b></p> <p><b><u>§461. Collection and disclosure of Social Security numbers</u></b></p>	

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b><u>1. Collection of Social Security number; prohibition; collection practice.</u></b> <u>An agency or official of this State or any of its political subdivisions may not collect (or maintain?) an individual's Social Security number unless specifically <b>required authorized</b> by state or federal law or court order. When an agency or official is <b>required authorized</b> to collect (or maintain?) an individual's Social Security number, the agency or official shall collect and maintain the Social Security number in manner that facilitates preserving the confidentiality of the Social Security number when it is contained in or associated with an otherwise public record.</u></p>	<ul style="list-style-type: none"><li>• What does “collect” mean?<ul style="list-style-type: none"><li>• Collect document, and it contains SSN</li></ul></li><li>• Collection of SSN “specifically required” is too narrow</li><li>• Phrasing the statute in the negative requires amending other statutes to enable existing government operations to continue. Simpler to declare that all government agencies are authorized to collect in order to positively ID or locate information or to contact a person; then prohibit unauthorized release</li><li>• The legislation should allow SSNs to be collected for workers’ compensation case tracking purposes and the like, but make it clear that disclosure of SSNs is strictly prohibited.</li><li>• Need lead-time</li><li>• Many times SSNs are collected because required by a federal agency, but not all of it is in law; federal regulations require the collection, and some collection is required by the federal agency on its own authority</li><li>• Cover independent authorities, too?</li><li>• Dept. of Audit’s work cuts across all State agencies and State and Federal programs; would need court orders or change in statute</li><li>• Limit collection to federal or state law or rule or court order, or for criminal justice purposes</li><li>• Registries of Deeds are required to file documents that may or may not have SSNs - conflicts with statute that says</li></ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
	<p>cannot redact unless specifically requested?</p> <ul style="list-style-type: none"> <li>• Change to “authorized” to collect rather than “required” to collect</li> <li>• Allow collection “for the purpose of carrying out the agency’s or official’s licensing, examination or investigative responsibilities</li> <li>• Include: unless the SSN is required in connection with an application for or administration of a loan or other financial assistance through the agency or official, or is an application to open or the administration of an account under T. 20, c. 417-E</li> </ul>
<p><b><u>2. Nondisclosure of Social Security number.</u></b> Except as provided in subsection 3, an agency or official <b><u>may not disclose an individual’s Social Security number.</u></b></p> <p><i>(This redraft eliminates the two-stage phase-in.)</i></p>	
<p><b><u>A. May not disclose an individual’s Social Security number if that Social Security number was collected on or after January 1, 2011; and</u></b></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> <li>• Is this giving the agency the option?</li> </ul>
<p><b><u>B. May redact or otherwise refuse to disclose an individual’s Social Security number that was collected prior to January 1, 2011.</u></b></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> <li>• Is the expectation that agencies go back into files and redact SSNs?</li> </ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<b><u>3. Permitted disclosure of Social Security numbers.</u></b> <u>An agency or official may disclose the Social Security number of an individual only in the following circumstances.</u>	
<u>A. An agency or official may disclose the Social Security number of an individual when the disclosure is expressly required by state or federal law or a court order.</u>	<ul style="list-style-type: none"><li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li></ul>
<u>B. A state or local law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local or federal agency or other legal entity.</u>	<ul style="list-style-type: none"><li>• Too narrow - many agencies need information, validation, conduct investigations that are not law enforcement agencies (change to “regulatory agency?”)</li><li>• Allows disclosure to anyone?</li><li>• Any way to make this a pilot project to see if it works?</li><li>• Dept. of Audit must disclose fraud to federal authorities (USGAO standards)</li><li>• Change “law enforcement agency” to “criminal justice agency”</li></ul>
<u>C. An agency or official may disclose the Social Security number of an individual when the individual expressly consents in writing to the disclosure.</u>	<ul style="list-style-type: none"><li>• Delete “expressly”</li><li>• Expand to consent to disclosure of non-public personal information</li></ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<b><u>D. An agency or official may disclose the SSN of an individual to another agency or official if it is necessary to carry out the other agency's or official's duties or responsibilities.</u></b>	<ul style="list-style-type: none"><li>• Authorize agencies to share SSNs only for purposes of carrying out responsibilities</li><li>• Add new ¶: D. A criminal justice agency may disseminate the SSN of an individual to another criminal justice agency for criminal justice purposes</li><li>• Add new ¶: D. An agency or official may disclose the SSN of an individual for purposes of carrying out the agency's or official's licensing, examination or investigative responsibilities</li><li>• Add new ¶: D. An agency or official may disclose the SSN of an individual to a credit reporting agency when permitted to obtain a credit report from, or to report or receive other information to or from a credit reporting agency under the Fair Credit Reporting Act or other applicable law</li><li>• Add a new ¶: E. An agency or official may disclose the SSN of an individual in connection with the agency's or officials activities related to the application, processing, servicing, reporting or collecting of a loan under the Federal Family Education Loan Program</li><li>• Add a new ¶: F. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue</li></ul>



Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
	<p>Services in connection with collecting an obligation to such agency, and entitle to have obligation offset from any tax refund</p> <ul style="list-style-type: none"><li>• Add a new ¶: G. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with administration of certain benefits under T. 20-A, c. 417-E to verify eligibility</li><li>• Add a new ¶: H. An agency or official may disclose the SSN of an individual collected in connection with the opening or administration of an account under T. 20-A, c. 417-E</li><li>• Add a new ¶: I. An agency or official may disclose the SSN of an individual in connection with any audits or other procedures conducted for the agency related to the agency's financial statements or records of any programs administered by the agency or any benefits awarded by the agency</li></ul>
<p><b>4. Compliance.</b> <u>An agency or official complies with this section if the agency or official either removes or completely and permanently obscures a Social Security number on a public record before disclosing the public record.</u></p>	<ul style="list-style-type: none"><li>• Applies only after 1/1/11?</li></ul>
<p><b>5. Notice.</b> <u>If an agency or official discloses a Social Security number in violation of this section, the agency or official shall provide notice to the person</u></p>	<ul style="list-style-type: none"><li>• Applies only after 1/1/11?</li><li>• Do the penalties of Title 10, c. 210-B apply, as well?</li></ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<u>whose Social Security number was disclosed as in Title 10, chapter 210-B.</u>	
<u><b>6. Require agencies to adopt policies/procedures regarding SSNs?</b></u>	
	Note: <ul style="list-style-type: none"><li>Federal criminal justice agencies routinely provide SSNs to the State Bureau of Identification when providing criminal history record information regarding individual</li><li>It is standard practice for the Maine Secretary of State's Office, Bureau of Motor Vehicles to provide SSNs to law enforcement agencies when such agencies request a driving history record report regarding any given individual</li></ul>

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Minimalist approach:

**Sec. 1. 1 MRSA §402, sub-§3, ¶N** is amended to read:

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

**Issues Raised at 07/19/10 Legislative Subcommittee Meeting**

Draft above indicates some changes in **bold and double-underlined**, but sounds like there are # of policy questions unanswered – per last meeting:

- Subcommittee expressed interest in reviewing all agency policies:
  - ➡ Is there a concern regarding over collection of SSNs?
  - ➡ Is there a concern regarding what to do with SSNs in possession of agencies?
- Agency redaction logistics/costs?
- Complexity of definitions/terms – “collection”, “possession”, “maintenance” as to SSNs?
- Is there a reason not to say SSNs are not “public records”?
- Or SSNs are confidential and may not be disclosed, except in identified situations?
- Awareness of need for sharing/exchanging SSNs among state agencies, but complicated

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Record/Minutes of Public Proceedings

(Changes from LD 1791 indicated in *italics*)

**Sec. 1. 1 MRSA §403**, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

**§403. Meetings to be open to public; record of meetings**

**1. Proceedings open to public.** Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public; *and any person must be permitted to attend a public proceeding and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection.*

**2. Record of public proceedings.** Unless otherwise provided by law, *records of all public proceedings a record of each public proceeding* for which notice is required under section 406 must be made within a reasonable period of time after the *proceedings proceeding* and *must* be open to public inspection. At a minimum, *a* the record must include:

- A. The date, time and place of the public proceeding;
- B. The members of the body holding the public proceeding recorded as either present or absent;
- C. The general substance of all matters *proposed, discussed or* decided or tabled; and
- D. All motions and votes taken, by individual member if there is a roll call.

**3. Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

**4. Maintenance of record.** *Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.*

**5. Validity of action.** *The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.*